

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

Plaintiff,

06-CV-6076T

v.

**ORDER**

RICHARD F. ANDERSON,

Defendant.

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Plaintiff United States of America, ("the government") brings this action against defendant Richard Anderson ("Anderson") claiming that the defendant owes the government \$120,096.26 in back-taxes from tax-years 1994 and 1996 through 2001.

The government now moves for summary judgment against Anderson contending that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law. In support of its motion, the government asserts that the defendant has acknowledged that the tax-levies against him were correct when made. The government further submits statements prepared by the IRS purporting to show the payments made by Anderson, and the amounts still owed by the defendant.

While it is true that the statements submitted by the government are "entitled to a presumption of correctness" United States v. Carlin, 948 F.Supp. 271, 276 (S.D.N.Y. 2002), the defendant in this case has submitted evidence in the form of an affidavit along with supporting exhibits suggesting that the IRS

misapplied payments made by him, and that as a result, the IRS's computation of interest and penalties is incorrect. For example, Anderson has submitted copies of checks written in 1994 which he alleges were supposed to be credited against 1994 taxes, and IRS statements showing that they were incorrectly applied to taxes owing from 1988. Defendant has raised numerous other issues with respect to the application of payments, and has submitted cancelled checks and account statements in support of his claims.

The government has failed to respond to any of the defendant's claims with respect to the misapplication of payments. Nor has the government responded to the evidence submitted in support of defendant's position that payments were incorrectly calculated. Accordingly, on the present record, I find that there are material questions of fact as to the amounts owed by the defendant which preclude a grant of summary judgment. I therefore deny the government's motion for summary judgment without prejudice.

ALL OF THE ABOVE IS SO ORDERED.

S/ Michael A. Telesca

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MICHAEL A. TELESCA  
United States District Judge

Dated: Rochester, New York  
September 6, 2007